

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASTE ACTION PROJECT, )  
Plaintiff, ) No. C13-01184 RSM  
v. )  
BUCKLEY RECYCLE CENTER, INC., )  
RONALD SHEAR, RONDA STERLEY, )  
and JEFFREY SPENCER, )  
Defendants. )  
\_\_\_\_\_  
CONSENT DECREE

## I. STIPULATIONS

Plaintiff Waste Action Project sent sixty day notices of intent to sue to defendants Buckley Recycle Center Inc. and Ronald Shear, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of pollutants and fill material at Buckley Recycle Center, Inc.'s operations on the property of defendant Jeffrey Spencer in unincorporated King County near Auburn, Washington, and seeking declaratory and injunctive relief, civil penalties, and attorneys' fees and costs.

Waste Action Project sent sixty day notices of intent to sue to Buckley Recycle Center Inc., Ronald Shear, Ronda Sterley, and Jeffrey Spencer, (“Defendants” collectively) alleging violations of the Resource Conservation and Recovery Act’s open dumping prohibition, 42 U.S.C.

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1 § 6945, relating to operations on the subject property, and seeking declaratory and injunctive  
2 relief, civil penalties, and attorneys' fees and costs.

3 The Defendants answered and denied the allegations of plaintiff Waste Action Project.

4 On December 7, 2016, the Court entered an order granting Waste Action Project's Third  
5 Motion to Enforce Settlement Agreement. On January 6, 2017, Buckley Recycle Center, Inc.  
6 ("BRC"), Ronald Shear, and Ronda Sterley (the "BRC Defendants") appealed the Court's  
7 December 7, 2016 order to the United States Court of Appeals for the Ninth Circuit.

8 BRC Defendants have closed on the acquisition of a new site for BRC's operations and  
9 have entered into a pre-application process with King County Department of Development and  
10 Environmental Services ("DDES") for the necessary permits to construct and operate a  
11 replacement facility on the new site. The precise date DDES will issue BRC the final Occupancy  
12 Permit for BRC's new site is currently unknown and therefore referred to herein as the  
13 "Occupancy Date."

14 Waste Action Project and Defendants agree that settlement of these matters is in the best  
15 interest of the parties and the public, and that entry of this Consent Decree is the most appropriate  
16 means of resolving this action, including BRC Defendants' appeal to the Ninth Circuit Court of  
17 Appeals, without any admission of liability of the Defendants.

18 Waste Action Project and Defendants stipulate to the entry of this Consent Decree without  
19 trial or adjudication of any issues of fact or law regarding Waste Action Project's claims or  
20 allegations set forth in its First Amended and Supplemental Complaint and its sixty-day notices.

22 Dated this 17th March, 2017  
23 Buckley Recycle Center, Inc.

Dated this 10th of March, 2017  
Waste Action Project

24 By /s/ Ronda Sterley  
25 Ronda Sterley  
26 Title:

By /s/ Greg Wingard  
Greg Wingard  
Title: Executive Director

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1 Dated this 17th March, 2017

2 Dated this 3/13/17, 2017

3 /s/ Ronald Shear  
Ronald Shear

4 /s/ Lee Spencer  
5 Estate of Jeffrey Spencer

6  
7 Dated this \_\_\_\_\_, 2017

8 \_\_\_\_\_  
9 Ronda Sterley

## II. ORDER AND DECREE

10 THIS MATTER came before the Court upon the foregoing Stipulations of the parties.

11 Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,  
12 ADJUDGES, and DECREES as follows:

13 1. This court has jurisdiction over the parties and subject matter of this action.

14 2. Each signatory for the parties certifies for that party that she or he is authorized to  
15 enter into the agreements set forth below.

16 3. This Consent Decree applies to and binds the parties and their successors and  
17 assigns.

18 4. This Consent Decree applies to the operation, oversight, or both by Defendants of  
19 the property located at 28225 West Valley Highway North, Auburn, Washington, 98002 (the  
20 “BRC Site” or the “Spencer Property”). The parties acknowledge that defendant Jeffrey Spencer  
21 passed away in January of 2015 and that the Spencer Estate is now the party owning the Spencer  
22 Property.

23 5. This Consent Decree is a full and complete settlement of the claims alleged in the  
24 First Amended and Supplemental Complaint and all other claims known and unknown existing as  
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1 of the date of entry of this Consent Decree, that could be asserted under the Clean Water Act, 33  
2 U.S.C. §§ 1251-1387, or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992,  
3 arising from operations at the BRC Site. These claims are released and dismissed with prejudice.  
4 Enforcement of this decree is Waste Action Project's exclusive remedy for any violation of its  
5 terms. With this Consent Decree, each party releases the other parties and the Estate of Jeffrey  
6 Spencer, from all claims of any sort arising from this lawsuit, with the exception of enforcement  
7 of this decree as provided for herein.

9       6. Defendants enter into this Consent Decree for the purposes of settlement of  
10 disputed claims, to avoid the expenses and uncertainty of litigation. Defendants admit no liability  
11 to any of the claims or allegations of Plaintiff.

12       7. Defendants agree to the following terms and conditions in full and complete  
13 satisfaction of the claims covered by this decree:

15           a.      BRC Defendants have removed all materials, including the berm, and all  
16 equipment, from the westernmost twenty-five feet along the west property line of the  
17 Spencer Property (hereinafter, the "West Buffer Area");

18           b.      BRC Defendants will vacate operations in and removed all materials and  
19 equipment from the northwest quarter (approximately 2.5 acres) of the Spencer Property  
20 (hereinafter the "Northwest Quarter") by September 30, 2017.

22           c.      BRC Defendants will employ their best efforts to submit a complete and  
23 adequate application as soon as possible to DDES for the necessary permits to construct  
24 and operate a replacement facility on a new site, and will otherwise employ their best  
25 efforts to obtain the final Occupancy Permit for BRC's new site. The date on which King  
26 County issues a final Occupancy Permit for BRC's new site and on which that site is

1                   legally available for full use for BRC's business shall be referred to herein as the  
2                   "Occupancy Date".

3                   d.        BRC Defendants will vacate operations in and remove all materials and  
4                   equipment from the remainder of the Spencer Property (approximately 7.5 acres) as  
5                   follows: one acre every six months following the Occupancy Date.

6                   e.        By the time BRC Defendants are required to vacate the last acre of the  
7                   Spencer Property they will vacate the entire Spencer Property and remove all materials  
8                   and equipment from the Spencer Property, including all berm materials, and all wheel  
9                   wash materials and equipment, including wheel wash piping and pavement, provided that  
10                   in the eastern third of the Spencer Property, the BRC defendants shall leave the property  
11                   in a condition suitable for residential use, which shall include existing driveways and  
12                   graveled areas, but excluding the wheel wash, as suitable and acceptable to the Spencer  
13                   Estate.

14                   f.        For any area which the BRC Defendants vacate in the western two thirds of  
15                   the Spencer Property, BRC Defendants will, upon vacating that area, till and plant a mix  
16                   of native plant species ("Habitat Seed Mix" defined as eight parts blue wildrye (*Elmus*  
17                   *glacis*), four parts slough sedge (*Carex obnupta*), and two parts each soft rush (*Juncus*  
18                   *effusus*), slender rush (*Juncus tenuis*), tufted hairgrass (*Deschampsia caespitosa*), and  
19                   western mannagrass (*Glyceria occidentalis*)) at a density of twenty pounds of seed per  
20                   acre evenly distributed throughout the area, with the goal of returning the western two  
21                   thirds of the property to a tillable condition, provided that BRC Defendants need not plant  
22                   Habitat Seed Mix in areas where the owner of the Spencer Property has begun row  
23                   cropping.

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g. BRC Defendants will aerate any significant water storage that results on vacated property as a result of the berm locations.

h. The BRC Defendants will notify Waste Action Project and the Estate of Jeffrey Spencer (Attn: Lee Spencer) in writing of their completion of each of the tasks listed in subparagraphs (a) through (f) of this paragraph seven.

i. Within seven (7) days of a written request to enter the Spencer Property, Defendants will permit Waste Action Project to enter the Spencer Property and allow reasonable access for Waste Action Project to verify completion of any of the tasks listed in subparagraphs (a) through (g) of this paragraph seven.

j. The BRC Defendants will forward copies of all written communications between the BRC Defendants and the Washington Department of Ecology and/or King County Department of Permitting and Environmental Review related to the Spencer Property to Waste Action Project and (if desired) to the Estate of Jeffrey Spencer (Attn: Lee Spencer) within seven days of the communication. This obligation will continue through the termination date of this Consent Decree.

8. In fulfillment of a term of the parties' settlement and in exchange for consideration, on or about October 15, 2015, the BRC Defendants did collectively pay \$500.00 to the Green River Community College Foundation for environmental benefit projects in the Green River watershed described in Attachment A to this Consent Decree. Payment was made by check payable Green River Community College Foundation and delivered to George Frasier, 12401 SE 320th St., Auburn WA 98092-3622.

9. The BRC Defendants will pay Waste Action Project's reasonable litigation fees and costs in the amount of \$193,783.53. This payment is full and complete satisfaction of any

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1 claims Waste Action Project may have under the Clean Water Act or the Resource Conservation  
2 and Recovery Act for fees and costs. Payments as set forth herein will be made by certified bank  
3 check(s) payable and mailed via certified mail to Smith & Lowney, PLLC, 2317 East John St.,  
4 Seattle, WA 98112, attn: Richard A. Smith. The BRC Defendants will make payments as  
5 follows:

6 a. \$133,783.53 within ten (10) days of the date of Court approval and execution of  
7 this Consent Decree;

8 b. \$10,000 per month beginning forty (40) days from the date of Court approval and  
9 execution of this Consent Decree and continuing until payment has been made in full.

10 10. The Court will retain jurisdiction over this matter and allow this case to be  
11 reopened without filing fee for the purpose of enabling the parties to apply to the Court for any  
12 further order that may be necessary to construe, carry out, enforce compliance and/or resolve any  
13 substantive dispute regarding the terms or conditions of this Consent Decree until termination of  
14 the Consent Decree per paragraph 13.

15 11. For any future claims that Waste Action Project may assert against BRC related to  
16 any property other than the BRC Site, WAP will agree to submit the dispute to mediation before  
17 instituting any legal action against BRC.

18 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent  
19 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior  
20 to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney  
21 General and the Administrator of the U.S. EPA. Therefore, upon the signing of this Consent  
22 Decree by the parties, Waste Action Project will serve copies of it upon the Administrator of the  
23 U.S. EPA and the Attorney General.

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1           13. This Consent Decree takes effect upon entry by the Court. It terminates upon  
2 completion of the tasks identified in paragraphs seven and nine of this Consent Decree.

3           14. All parties have participated in drafting this decree.

4           15. This Consent Decree may be modified only upon the approval of the Court.

5           16. If for any reason the court should decline to approve this Consent Decree in the  
6 form presented, this Consent Decree is voidable at the discretion of any party. The parties agree  
7 to continue negotiations in good faith in an attempt to cure any objection raised by the Court to  
8 entry of this Consent Decree.

9           17. Notifications required by this Consent Decree must be in writing. The sending  
10 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or  
11 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally  
12 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other  
13 communication regarding this decree to be valid, it must be delivered to the receiving party at the  
14 addresses listed below or to any other address designated by the receiving party in a notice in  
15 accordance with this paragraph seventeen.

16           **if to Waste Action Project:**

17           Waste Action Project  
18           P.O. Box 4832  
19           Seattle, WA 98194  
20           email: gwingard@earthlink.net

21           **and to:**

22           Smith & Lowney PLLC  
23           2317 East John St.  
24           Seattle, WA 98112  
25           email: clairet@igc.org

26           CONSENT DECREE:  
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1                   **if to Defendant(s):**

2                   Buckley Recycling Center  
3                   P.O.Box 1373  
4                   Enumclaw, WA 98022

5                   **and to:**

6                   Justin D. Park  
7                   Romero Park P.S.  
8                   155 108<sup>th</sup> Ave. NE, Suite #202  
9                   Bellevue, WA 98004  
10                  email: jpark@romeropark.com and sprendergast@romeropark.com

11                  **and to:**

12                  Lee Spencer  
13                  Personal Representative of the Estate of Jeff Spencer  
14                  6710 S 267<sup>th</sup>  
15                  Auburn WA 98001

16                  **and to:**

17                  Robert E. West, Jr.  
18                  West Law Offices, PS  
19                  332 1st St NE  
20                  Auburn, WA 98002

21                  A notice or other communication regarding this Consent Decree will be effective when  
22                  received unless the notice or other communication is received after 5:00 p.m. on a business day,  
23                  or on a day that is not a business day, in which case the notice will be deemed received at 9:00  
24                  a.m. on the next business day. A notice or other communication will be deemed to have been  
25                  received: (a) if it is delivered in person or sent by registered or certified mail or by nationally  
26                  recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if  
                        the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of  
                        a change in address for which no notice was given, then upon that rejection, refusal, or inability to  
                        deliver; or (c) for notice provided via e-mail, upon receipt of a confirming response or a "read

1 receipt" from the party receiving notice.

2 SO ORDERED this 11<sup>th</sup> day of May 2017.

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RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE